

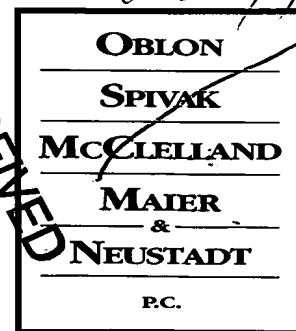


41

Docket No.: 199463US0X PCT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

RECEIVED  
JAN 16 2004  
TECH CENTER 1600/2900



ATTORNEYS AT LAW

RE: Application Serial No.: 09/674,496  
Applicants: Bernard DELOBEL, et al.  
Filing Date: January 11, 2001  
For: USE OF A POLYPEPTIDE DERIVED FROM A PA1B  
LEGUME ALBUMEN AS INSECTICIDE  
Group Art Unit: 1638  
Examiner: Collins, C.E.

SIR:

Attached hereto for filing are the following papers:  
**Preliminary Amendment and Statement w/attached Sequence Listing and Computer Readable Form (CRF)**

**Request for Extension of Time - Three Months**  
**Copy of PTO Communication dated September 14, 2003**

Our check in the amount of \$950.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

Norman F. Oblon

Registration No. 24,618

Customer Number

**22850**

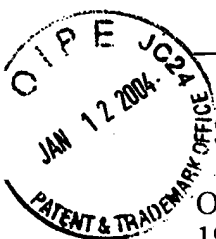
(703) 413-3000 (phone)  
(703) 413-2220 (fax)

Vincent K. Shier, Ph.D.  
Registration No. 50,552



UNITED STATES  
PATENT AND  
TRADEMARK OFFICE

#21



SEP 14 2003

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PO BOX 1450, ALEXANDRIA, VA 22313-1450  
WWW.USPTO.GOV

RECEIVED: 822 8

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
MAIER & NEUSTADT, P.C.

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA VA 22314

DOCKETING DEPT

Initials/Date Docketed: W82242  
Type of Resp(s): Seq listing  
Due Date(s): 10/14/03

**COPY**

In re Application of  
Bernard Delobel et al  
Serial No.: 09/674,496  
Filed: January 11, 2001  
Attorney Docket No.: 199463US0X10

WITHDRAWAL OF ABANDONMENT

DOCKETING DEPT.

AUG 18 2003

WILLIAMS, MORGAN & AMERSON

This is in response to the petition under 37 CFR 1.181, filed June 23, 2003, requesting withdrawal of abandonment based on a timely filed reply.

A review of the file history shows the examiner mailed a non-Final Office action to applicants on March 14, 2002, setting a one month shortened statutory period for reply. Applicants replied on May 14, 2002, including a one month extension of time. The examiner then mailed a Notice to Comply with Sequence Rules to applicants on July 19, 2002, setting a one month time period for reply. Applicants replied on August 19, 2002, by providing a sequence listing. On September 24, 2002, the examiner mailed a second Notice to Comply, again setting a one month time period for reply, accompanied by an error report on the first supplied CRF listing. Applicants filed a new sequence listing on October 24, 2002, attempting to correct the errors noted. A third Notice to Comply was mailed to applicants on January 6, 2003, setting a one month period for reply, indicating that the supplied sequence did not comply with sequence rules. Applicants replied on February 6, 2003, with a new sequence listing and CRF disk. This submission was found to have the same error as the previously submitted disk. As a consequence the examiner mailed a Notice of Abandonment to applicants on April 22, 2003, accompanied by the error report.

Applicants petition the holding of abandonment as improper inasmuch as each of the attempts, including the last one, are bona fide attempts to comply with the sequence rules, and therefore, there should not have been a holding of abandonment made.

From a review of the submitted sequence listing and error reports it is clear that applicants have attempted to comply with the sequence rules. However, one violation of the rules appears to recur throughout the various attempts to comply with the rules and this is indicated by item 5 on the error report and relates to variable length sequence listings. It appears that applicants have used a single "Xaa" in several places in a sequence listing to indicate variability in length. As noted in the error report, this is improper. The number of "Xaa" in the sequence must correspond

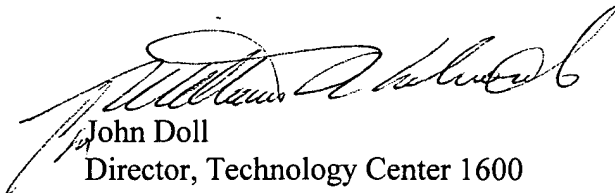
to the maximum number of amino acids represented with an explanation that one or more may be absent. (I.e. - one "Xaa" cannot represent more than one amino acid.) Sequence 1 of the current Sequence listing shows 13 amino acids in the sequence length, but qualifies each of the Xaa's as being of variable length (4 to 15). Thus a proper listing of the Sequence should show a length of 70 amino acids wherein any one or more of Xaa at positions 1-10 ... may be absent, or similar explanatory language. For further guidance, applicants are encouraged to contact Mark Spencer, who specializes in determining sequence compliance, at 703-308-4266.

Applicants' attempts at providing a properly compliant sequence listing appear to be bona fide and the application should not have been held abandoned.

Applicants' petition is **GRANTED**. The application is restored to pending status with the mailing of this decision.

**As applicants have received the most recent Error Report with the Notice of Abandonment, applicants are give ONE MONTH from the date of mailing of this decision within which to provide a new compliant Sequence Listing and CFR disk. This time period is extendable under 37 CFR 1.136(a).**

Should there be any questions regarding this decision, please contact William R. Dixon, Jr., by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.



John Doll  
Director, Technology Center 1600